



Order Filed on October 1, 2022
by Clerk
U.S. Bankruptcy Court
District of New Jersey

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
Caption in Compliance with D.N.J. LBR 9004-1

SILLS CUMMIS & GROSS P.C.

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*Counsel to the Debtors
and Debtors-in-Possession*

In re:

NATIONAL REALTY INVESTMENT ADVISORS,
LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 22-14539 (JKS)

(Jointly Administered)

**ORDER RESOLVING MOTION OF U.S. CONSTRUCTION, INC. FOR ORDER
COMPELLING PERFORMANCE AND/OR ASSUMPTION OF AGREEMENTS AND
FOR RELATED RELIEF**

The relief set forth on the following pages, numbered two (2) through and including seven (7), including Exhibits 1-3 annexed hereto, is hereby **ORDERED**.

DATED: October 1, 2022



Honorable John K. Sherwood
United States Bankruptcy Court

¹ A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at <https://omniagentsolutions.com/NRIA>. The location of the Debtors' service address is: 1 Harmon Plaza, Floor 9, Secaucus, New Jersey 07094.

Debtor: National Realty Investment Advisors LLC, et al.
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Upon the motion (the “**Motion**”)¹ of U.S. Construction, Inc. (“**U.S. Construction**”) for entry of an order compelling performance and/or assumption of agreements and for related relief (Docket No. 125) (the “**Motion**”); and the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) and U.S. Construction having met and conferred in good faith regarding the Motion and having agreed to resolve the Motion on the terms set forth herein; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11* of the United States District Court for the District of New Jersey, entered on July 23, 1984, as amended on September 18, 2012 (Simandle, C.J.); and this Court having the power to enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is

IT IS HEREBY AGREED TO BY U.S. CONSTRUCTION AND THE DEBTORS, AND ORDERED, ADJUDGED AND DECREED THAT:

1. U.S. Construction shall assign to the Debtor those subcontracts, general conditions contracts and general requirements contracts as designated by the Debtors (collectively, the “**Subcontracts**”) relating to the project known as Ocean Delray Estates, located at 1901 S. Ocean Blvd., Delray Beach, FL (the “**ODR Estates Project**”). For the avoidance of doubt, the lease for the U.S. Construction sales office for the ODR Estates Project

¹ Capitalized terms not otherwise defined shall have the meanings ascribed to them in the Motion.

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and the contracts and subcontracts relating to the Ocean Delray Condominiums (the “**ODR Condo Project**”) shall not be assigned to the Debtors. Furthermore, the Debtors shall not pay any pre- or post-petition amounts due to the vendors relating to the ODR Condo Project except as provided for in Paragraph 3 below.

2. On behalf of U.S. Construction, the Debtors will pay the Subcontractors whose contracts are assigned pursuant to Paragraph 1: (i) no more than \$668,891.56 for approved post-petition goods and services provided to or performed at the ODR Estates Project in accordance with the schedule attached hereto as **Exhibit 1**; and (ii) an amount equal to the confirmed and reconciled pre-petition claims of the Subcontractors for pre-petition goods and services provided to or performed at the ODR Estates Project, not to exceed the estimate of \$609,359.59 in accordance with the schedule attached hereto as **Exhibit 2**. The Debtors will communicate and verify amounts owed to each vendor directly with such vendor without U.S. Construction’s intervention or assistance.

3. On behalf of U.S. Construction, the Debtors will pay vendors owed money relating to the ODR Condo Project an amount equal to no more than \$1,521,702.57 for approved pre-petition goods and services provided to or performed at the ODR Condo Project in accordance the schedule attached hereto as **Exhibit 3**. Such payments shall only be made upon receipt of lien waivers and lien releases, as appropriate, in favor of the Debtors until no potential vendor claim remains against the ODR Condo Project. U.S. Construction will be permitted to negotiate directly with such vendors concerning the amount of the vendors’ claims, and upon the waiver and release of all vendors’ claims against the ODR Condo Project the difference, if

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any, between \$1,521,702.57 and the aggregate amount paid for the waiver and release of vendor claims shall be paid by the Debtors to U.S. Construction. Any claim asserted by U.S. Construction and ultimately allowed by the Bankruptcy Court shall be reduced by the amount paid by the Debtor to U.S. Construction under this Paragraph 3.

4. U.S. Construction represents that there are no known pending Subcontractor change orders or price increases, or architectural plan changes or site plan changes that are not reflected on the building permits or plans on file with applicable building and site-related governing authorities, except for (i) the final plan submissions for building, site and landscape revisions required to obtain certificates of occupancy (it being understood that the design professionals will prepare stamped plans for submission to the appropriate authority(ies)), (ii) \$9,457.50 relating to the ODR Estates Project and \$647.40 relating to the ODR Condo Project due to Caufield & Wheeler, Inc., and (iii) updated change event log which was last submitted on May 18, 2022 with draw 15. U.S. Construction shall provide the Debtors with a written list of all price increases and/or architectural or site plan changes with respect to (i), (ii), and (iii) in the immediately preceding sentence within five (5) days after the entry of this Order.

5. U.S. Construction shall disclose all locations where materials relating to the ODR Estates Project are being held and assign title and all deposits with respect to such materials to the Debtors, shall notify all vendors of such assignment, and shall fully cooperate to facilitate the Debtors' taking possession and control of such materials.

6. U.S. Construction shall convey to the Debtors all marketing materials and a royalty free, exclusive license of the URLs for all websites relating to the ODR Estates Project,

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provided, however, that the Debtors acknowledge and agree that U.S. Construction's URL's and websites are proprietary and shall remain the property of U.S. Construction. The Debtors shall be responsible for any costs associated with utilizing and maintaining the URL's, websites, and any phone numbers mentioned in the marketing materials.

7. U.S. Construction shall assign to the Debtors all ODR Estates Project documents to the Debtors, including but not limited to architectural plans, engineering plans, surveys, geo-tech, site plans, developers' agreement, approvals, performance bonds, cash bonds, utilities, landscape plans, environmental plans, and special inspections. To the extent any of the foregoing ODR Estates Project documents are not assignable U.S. Construction shall fully cooperate to facilitate the transition and conversion of such documents to the Debtors.

8. The development and construction contracts (collectively, the "**General Contract**") with U.S. Construction relating to the ODR Estates Project and ODR Condo Project be, and hereby are, rejected by the Debtors pursuant to 11 U.S.C. § 365(a). Upon the entry of this Order, the rejection of the General Contract and assignment of the Subcontracts as provided for in this Order, U.S. Construction's construction license(s) shall be removed from the ODR Estates Project and ODR Condo Project, and the Debtors shall be solely responsible for providing any necessary construction license(s). U.S. Construction shall remain a named insured on the Owner-Controlled Insurance Program insurance policy.

9. Nothing in this Order shall limit (i) U.S. Construction's right to assert claims, including a proof of claim against the Debtors, provided, however, that U.S. Construction shall file any proof of claim by the later of (x) thirty (30) days after the entry of this Order on the

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docket, or (y) the date set as the Bar Date or deadline for filing proofs of claims in this case, or (ii) the Debtors' right to assert claims against U.S. Construction. For the avoidance of doubt, nothing in this Order is, nor shall it be constructed as, a waiver or limitation of the Parties' rights with respect to the adversary proceeding captioned, *National Realty Investment Advisors LLC v. U.S. Construction, Inc., et al.*, Adv. Pro. No. 22-01257 (the "**Adversary Proceeding**").

10. The Debtors and U.S. Construction agree to select a mediator and commence mediation of the Adversary Proceeding within sixty (60) days of the entry of this Order. The Court hereby directs that representative of all parties to the Adversary Proceeding with decision making authority to settle the dispute shall attend the mediation. Pending conclusion of the mediation, the Adversary Proceeding will be stayed, except that the defendants named in the Adversary Proceeding shall file an answer to the complaint by the extended deadline specified in the *Stipulation to: (1) Dismiss Defendant US Construction & Development LLC from the Action, Without Prejudice; (2) Amend the Caption and Complaint; and (3) Extend the Remaining Defendants' Time to Move, Answer or Otherwise Respond to Plaintiff's Complaint* (Docket No. 11) filed in the Adversary Proceeding on September 20, 2022.

11. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

12. This Order shall be binding on all the parties in these Chapter 11 Cases, including a subsequently appointed chapter 11 or chapter 7 trustee.

13. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

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WE AGREE AND CONSENT TO THE RELIEF SET FORTH HEREIN:

**NATIONAL REALTY INVESTMENT
ADVISORS LLC, ET AL.**

By: /s/ John Fioretti
John Fioretti
Chief Restructuring Officer

U.S. CONSTRUCTION, INC.

By: _____
John Farina
President and Chief Executive Officer

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**NATIONAL REALTY INVESTMENT
ADVISORS LLC, ET AL.**

By: _____
John Fioretti
Chief Restructuring Officer

U.S. CONSTRUCTION, INC.

DocuSigned by:
By: John Farina
John Farina
President and Chief Executive Officer

EXHIBIT 1

<u>Ocean Delray Estates Draw 16 - POST-PETITION</u>		
VENDOR	ADDRESS	AMOUNT
Randall E. Stofft Architects	42 N Swinton Ave, Delray Beach, FL 33444	\$3,750.00
Vesta Modular	PO Box 530068, Atlanta, GA 30353	\$278.20
Florida Fence Rental, Inc.	8491 NW 64 Street, Miami, FL 33166	\$630.82
Ferguson Enterprises, Inc	1821 Washington Ave, Philadelphia, PA 19146	\$2,893.67
Hardie Boys	3400 NW 25th Ave, Pompano Beach, FL 33069	\$21,301.05
Coastal Waste & Recycling	1840 NW 33rd St, Pompano Beach, FL 33064	\$935.00
Crown Roofing and Waterproofing	240 Field End Street, Sarasota, FL 34240	\$25,882.50
Griffin & Wilson Enterprise	6903 Vista Parkway N, Ste 4, West Palm Beach, FL 33411	\$55,276.00
Labor for Hire	PO Box 60839, Charlotte, NC 28260	\$3,198.36
Leed Insulation	3412 Industrial 33rd Street, Fort Pierce, FL 34946	\$7,311.00
Wallcraft Custom	1 Duke Drive, Lake Worth, FL 33460	\$14,439.51
Bulldog Fence of Florida, LLC	800 SW 15th Ave, Delray Beach, FL 33444	\$5,413.44
OC Electrical, LLC	4581 Weston Road #211, Weston, FL 33331	\$53,832.72
Harris Fire Protection	16342 68th Street North, Loxahatchee, FL 33470	\$12,650.00
Pugh Pools, LLC	313 North Railroad, Boyton Beach, FL 33435	\$12,500.00
Paramount Consulting & Eng	6135 NW 167th Street, Ste E1, Miami, FL 33015	\$710.00
Estates -Draw 16 Total		\$221,002.27

<u>Ocean Delray Estates Draw 17 - POST-PETITION</u>		
VENDOR	ADDRESS	AMOUNT
Caulfield & Wheeler Inc.	7900 Glades Road, Ste 100, Boca Raton, FL 33434	\$2,877.50
Nutting Engineers of Florida	1310 Neptune Drive, Boyton Beach, FI 33426	\$1,475.00
United Site Services	PO Box 130, Keasbey, NY 08832	\$213.11
Lank Oil	2203 W McNab Road, Pompano Beach, FL 33069	\$990.66
Coastal Waste & Recycling	1840 NW 33rd St, Pompano Beach, FL 33064	\$935.00
Delray Blueprint Co.	550 NE 5th Ave, Delray Beach, FL 33483	\$143.97
Griffin & Wilson Enterprise	6903 Vista Parkway N, Ste 4, West Palm Beach, FL 33411	\$32,097.97
Florida Builders, LLC	PO Box 212949, Royal Palm Beach, FL 33411	\$89,460.00
Labor for Hire	PO Box 60839, Charlotte, NC 28260	\$12,703.69
Damon's Concrete Cutting	5455 Canal Dr. Lake Worth, FL 33463	\$900.00
Suntech Plumbing & Merch. Corp.	6308 NW 99 Ave, Doral, FL 33178	\$48,150.00
OC Electrical, LLC	4581 Weston Road #211, Weston, FL 33331	\$20,001.89
Harris Fire Protection	16342 68th Street North, Loxahatchee, FL 33470	\$5,940.00
Suntech Plumbing & Merch. Corp.	6308 NW 99 Ave, Doral, FL 33178	\$39,960.00
Blackfin Building and Dev.	2801 SW 3rd Ave, Ste F-7, Fort Lauderdale, FL 33315	\$192,040.50
Estates -Draw 17 Total		\$447,889.29

TOTAL	\$668,891.56
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EXHIBIT 2

<u>Ocean Delray Estates Draw 15 - PRE-PETITION</u>		
VENDOR	ADDRESS	AMOUNT
Randall E. Stofft Architects	42 N Swinton Ave, Delray Beach, FL 33444	\$1,350.00
Custom Truss	510 Industrial Ave, Boyton Beach, FL 33446	\$9,380.00
Caulfield & Wheelerm Inc.	7900 Glades Road, Ste 100, Boca Raton, FL 33434	\$2,889.30
Nutting Engineers of Florida	1310 Neptune Drive, Boyton Beach, FL 33426	\$818.75
TLC Engineering for Arch.	255 South Orange Ave, Suite 1600, Orlando, FL 32801	\$2,648.00
Ferguson EnterpriseS, Inc	1821 Washington Ave, Philadelphia, PA 19146	\$7,008.33
Werever Outdoor Cabinetry	6120 Pelican Creek Circle, Riverview, FL 33578	\$31,322.23
Crown Roofing and Waterproofing	240 Field End Street, Sarasota, FL 34240	\$31,037.23
Griffin & Wilson Enterprise	6903 Vista Parkway N, Ste 4, West Palm Beach, FL 33411	\$57,232.80
Wallcraft Custom	1 Duke Drive, Lake Worth, FL 33460	\$1,125.00
Speedy Concrete Cutting, Inc	2579 NW 19TH Street, Ft Lauderdale, FL 33311	\$1,115.00
Bulldog Fence of Florida, LLC	800 SW 15th Ave, Delray Beach, FL 33444	\$4,790.00
GYP- Tech	7446 SW 39th Street, Palm City, FL 34990	\$32,001.75
Smarth Things EC, Inc.	6813 Norton Ave, Ste 3, West Palm Beach, FL, 33405	\$67,196.34
Oak Flooring, Inc.	11496 Pierson Rd, Ste C-8, Wellington, FL 33414	\$24,110.00
Florida Exotic A Landscape Co.	4016 SW Moore St, Palm City, FL 34990	\$59,895.00
Suntech Plumbing & Merch. Corp.	6308 NW 99 Ave, Doral, FL 33178	\$60,750.00
Accredited Home Elevator of NJ	127 South Main Street, Barnegat, NJ 08005	\$9,585.12
OC Electrical, LLC	4581 Weston Road #211, Weston, FL 33331	\$9,562.50
Pugh Pools, LLC	313 North Railroad, Boyton Beach, FL 33435	\$7,758.00
JC Iron Ornamental Works, Inc	1213 50th Street, West Palm Beach, FL 33407	\$53,390.25
A Christian Glass & Mirror Co.	925 S. Congress Ave, Delray Beach, FL 33445	\$121,442.67
Coastal Waste & Recycling	1840 NW 33rd St, Pompano Beach, FL 33064	\$4,901.05
Vesta Modular	PO Box 530068, Atlanta, GA 30353	\$280.88
Labor for Hire	PO Box 60839, Charlotte, NC 28260	\$2,024.04
Sunbelt Rentals, Inc.	PO Box 409211, Atlanta, GA 30384	\$5,600.35
Imperial Plumbing	6278 Federal Hwy, Fort Lauderdale, FL 33308	\$145.00
Estates -Draw 15 Total		\$609,359.59

EXHIBIT 3

<u>Ocean Delray Condos Draw 31 - PRE-PETITION</u>		
VENDOR	ADDRESS	AMOUNT
Kast Construction Company	701 Northpoint Parkway, ste 400, West Palm Beach, FL 33407	\$1,234,708.60
Kast Construction Company-RETAINAGE	701 Northpoint Parkway, ste 400, West Palm Beach, FL 33407	\$ (619,565.72)
Kast Construction Company- NET OF RETAINAGE	KAST TOTAL OF CONDO DRAW 31	\$ 615,142.88
Quality Stone by Martile, Inc	9355 NW South River Drive, Medley, FL 33166	\$52,419.61
Power Design, Inc.	11600 Ninth Street North, St. Petersburg, FL 33716	\$62,337.90
Ferguson EnterpriseS, Inc	1821 Washington Ave, Philadelphia, PA 19146	\$7,167.83
Fitnessmith	3610 Quantum Blvd, Boton Beach, FL 33426	\$2,996.00
Tizzoni Cucine, Inc	2798 SW 32 Avenue, Hollywood, FL 33023	\$1,060.15
Access Lifts & Elevator, Inc	8362 Pines Blvd. #380, Pembroke Pines, FL 33024	\$3,674.00
Universal Tile & Marble Enterprise	2816 Center Port Circle, Pompano Beach, FL 33064	\$22,290.02
Designer Floors of South Florida	601 N. Congress Ave #604, Delray Beach, FL 33445	\$51,595.89
VENDOR TOTAL OF CONDO DRAW 31		\$203,541.40
CONDO DRAW 31 TOTAL		\$818,684.28

<u>Ocean Delray Condos Draw 32 - PRE-PETITION</u>		
VENDOR	ADDRESS	AMOUNT
Randall E. Stofft Architects	42 N Swinton Ave, Delray Beach, FL 33444	\$25,974.00
Ferguson EnterpriseS, Inc	1821 Washington Ave, Philadelphia, PA 19146	\$136,450.24
Fireplace		\$13,920.43
Universal Tile & Marble Enterprise	2816 Center Port Circle, Pompano Beach, FL 33064	\$226,673.62
VENDOR TOTAL OF CONDO DRAW 32		\$403,018.29

ADDITIONAL FUNDS TO SETTLE KAST IN FULL & RELEASE LIEN	\$300,000.00
TOTAL	\$1,521,702.57